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Attorney Docket No. 47233-0045
PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APPLICATION of:

Motoo SUMIDA et al.

Application No.: 10/511,829

Filed: October 20, 2004

FOR: ASTAXANTHIN MEDIUM-CHAIN
FATTY ACID ESTER, PRODUCTION
METHOD OF THE SAME AND
COMPOSITION COMPRISING THE
ESTER (As Amended)

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: Confirmation No.: 8556
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: Group Art Unit: 1621
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: Examiner: Yate Kai Rene Cutliff
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RESPONSE TO RESTRICTION REQUIREMENT

MAIL STOP: AMENDMENT

Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

Applicants submit the following reply in timely response to the Office Action mailed August 13, 2007, and which is due on or before September 13, 2007. In the Restriction Requirement, the Office requires restriction of the invention to one of the following groups:

Group I, claims 1-5, 7, 15-18, 21-27, and 29-32, drawn to the product and composition of astaxanthin medium-chain fatty acid ester.

Group II, claims 8-14, 19, 20, and 28, drawn to the method of producing astaxanthin medium-chain fatty acid ester.

Applicants elect the claims of **Group I** (claims 1-5, 7, 15-18, 21-27, and 29-32) with traverse. Applicants point out that the Office is in error pursuant to 37 C.F.R. § 1.475(b)(1). There is unity between the product and the process specifically adapted to the manufacture of said product. Rule 1.475(b) does not require special technical features. The restriction of the claims into two separate groups is improper and should be withdrawn. Applicants respectfully request Group II claims to be rejoined with Group I claims. In any event, should

the claims under Group I be found allowable, then the claims of Group II directed to the method of making the product should be rejoined under rejoinder practice. Applicants further point out that the Office failed to adduce why there would be a *serious burden* to examine the claims of both groups. Thus, the restriction is improper in lacking the requisite evidentiary support. Moreover, Applicants, note that restriction practice is discretionary. *See* 35 U.S.C. § 121.

In conclusion, should the Examiner have any questions or comments regarding Applicants' response, she is asked to contact Applicants' undersigned representative at (202) 842-8821. In the event that the Office believes that there are fees outstanding in the above-referenced matter, and for purposes of maintaining pendency of the application, the Office is authorized to charge any outstanding fees to Deposit Account No. 50-0573. The Office is likewise authorized to credit any overpayment to the same deposit account number.

Date: September 13, 2007

Respectfully submitted,
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